

Remarks

This Application has been carefully reviewed in light of the Office Action mailed November 17, 2005. Applicants appreciate the Examiner's consideration of the Application. Although Applicants believe all claims are allowable over the Examiner's rejections without amendment, Applicants have made a clarifying amendment to independent Claim 1. This amendment is not considered narrowing or necessary for patentability. Applicants respectfully request reconsideration and allowance of all pending claims.

I. The Claims are Allowable over the Rejections under 35 U.S.C. § 102

A. Claims 1-38 are Allowable over *McDuff*

The Examiner rejects Claims 1-38 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2001/0012356 to McDuff, et al. ("*McDuff*").

Essentially, for each of the client monitor and the plan manager recited in Claim 1, the Examiner ignores every limitation after the phrase "operable to," as recited in Claim 1. (*See* Office Action, Page 2) Applicants respectfully submit that this was improper.

First, the Examiner has cited no support in the applicable statutes, regulations, rules, or case law for the proposition that "[a]s for the steps carried out by the modules, these have no patentable weight since they do not instruct/direct a computer processor to carry out these steps" and that these steps are therefore nonfunctional and have no patentable weight. (*See* Office Action, Page 2) Nor does the Examiner provide any basis for simply ignoring those limitations during prosecution for purposes of analyzing the claim with respect to a cited reference.

Second, a "claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. § 2131 (emphasis added). "The identical invention must be shown *in as complete detail as is contained in the . . . claim.*" *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226,

1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); M.P.E.P. § 2131 (emphasis added). The Examiner admittedly ignored various limitations recited in Claims 1-38 when applying *McDuff* to these claims, stating that “steps carried out by the modules . . . have no patentable weight.” (Office Action, Page 2) The Examiner apparently concludes that because *McDuff* allegedly discloses a memory and modules, it purportedly anticipates Applicants’ claims (ignoring all of the details recited in Applicants’ Claims 1-38). Since the Examiner has not demonstrated or even argued that *McDuff* discloses, teaches, or suggests each and every limitation recited in Claim 1, for example, Applicants respectfully submit that the Examiner’s rejection is flawed.

In any event, although Applicants believe all limitations recited in Claim 1 should be considered without amendment, to advance prosecution Applicants have made clarifying amendments to Claim 1 such that Claim 1 recites:

A system for implementing a recording plan based upon the presence of a client, comprising:
one or more processing units;
a client monitor operable to, when executed by at least one of the one or more processing units, generate a presence message signifying the presence of a client on a network associated with the system, wherein the presence message comprises a presence type and a client identity; and
a plan manager operable to, when executed by at least one of the one or more processing units:
 receive the presence message from the client monitor;
 retrieve a plan template in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type; and
 create a recording plan associated with the client based at least in part upon the plan template.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, “[t]he elements must be arranged as required by the claim.” *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131. In ignoring the bulk of the limitations recited in Claims 1-38, the Examiner has not demonstrated that *McDuff* discloses, either expressly or

inherently, each and every limitation recited in Claims 1-38, as is required under the M.P.E.P. and governing Federal Circuit cases.

For example, Applicants respectfully submit that, at a minimum, *McDuff* fails to disclose, teach, or suggest the following limitations recited in Claim 1 (both prior to and after the amendments presented in this Response):

- a client monitor operable to . . . generate a presence message signifying the presence of a client on a network associated with the system, wherein the presence message comprises a presence type and a client identity; and
- a plan manager operable to:
 - receive the presence message from the client monitor;
 - retrieve a plan template in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type; and
 - create a recording plan associated with the client based at least in part upon the plan template.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependent claims.

B. Claims 39-62 are Allowable over *Pattison*

The Examiner rejects Claims 39-62 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,946,375 to *Pattison*, et al. ("*Pattison*"). Applicants respectfully disagree and discuss independent Claim 39 as an example.

Applicants reiterate the above-discussed legal standard for anticipation. As demonstrated below, *Pattison* does not disclose, either expressly or inherently, each and every limitation recited in Claims 39, as is required under the M.P.E.P. and governing Federal Circuit cases.

At a minimum, *Pattison* does not disclose, teach, or suggest a processor operable to perform the following limitations, as recited in Claim 39:

- receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity;

- retrieve a plan template from the memory in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type; and
- create a recording plan associated with the client based at least in part upon the plan template.

For example, *Pattison* does not disclose, teach, or suggest “a processor . . . operable to . . . receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity,” as recited in Claim 39. The Examiner cites Figure 1, element 14 of *Pattison* as allegedly disclosing these limitations of Claim 39. (See Office Action, Page 3) Figure 1, element 14 of *Pattison* is merely an illustration of an agent workstation. The fact that the system disclosed in *Pattison* includes an agent workstation does not disclose, teach, or suggest the “presence message” recited in Claim 39, let alone “a processor . . . operable to . . . receive a presence message signifying the presence of a client on a network associated with the system, the presence message comprising a presence type and a client identity,” as recited in Claim 39.¹

As another example, *Pattison* does not disclose, teach, or suggest a processor operable to “retrieve a plan template from the memory in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type,” as recited in Claim 39. As allegedly disclosing these limitations of Claim 39, the Examiner merely cites Figure 1, element 16 of *Pattison* – a platform 16 that, according to *Pattison*, connects to an ACD and includes the necessary controls and software instructions for performing the various functions of environment 10. (See Office Action, Page 3; *Pattison*, Figure 1, 4:6-10) However, *Pattison* does not disclose, teach, or suggest that platform 16 “*retrieve[s] a plan template from the memory in response to receiving the presence*

¹ Applicants note that with respect to all of the limitations recited in Claim 39, the Examiner has not pointed with any real particularity to what portions of the description in *Pattison* the Examiner believes disclose the limitations recited in the claim. For example, with respect to the limitation “a memory operable to store a plurality of plan templates and client information,” as recited in Claim 39, the Examiner merely cites Figure 1, element 10 of *Pattison*. (See Office Action, Page 3) Figure 1, element 10 of *Pattison* identifies an embodiment of the entire system described in *Pattison*, not any sort of memory. Applicants respectfully request that, in the event the Examiner maintains any portion of the rejection based on *Pattison*, the Examiner more clearly identify which portions of *Pattison* the Examiner believes disclose, teach, or suggest the limitations recited in Applicants’ claims. This would greatly assist Applicants in understanding the Examiner’s position and responding appropriately, so as to advance prosecution of this case efficiently.

message, wherein the plan template is retrieved *based upon the client identity and the presence type [specified in the presence message]*,” as recited in Claim 39.²

As another example, at least because *Pattison* does not disclose, teach, or suggest “retriev[ing] a plan template,” as recited in Claim 39, *Pattison* necessarily does not disclose, teach, or suggest “creat[ing] a recording plan associated with the client *based at least in part upon the plan template*,” as recited in Claim 39

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 39 and its dependent claims. For at least certain analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claim 51 and its dependent claims.

II. No Waiver

All of Applicants’ arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner’s rejections.

² Applicants reiterate the points made above in footnote 1. For example, platform 16 in *Pattison* is disclosed as capable of performing a variety of functions. The Examiner did not indicate with any specificity what portions of the description of platform 16 purportedly disclose the limitations recited in Claim 39, which makes it difficult for Applicants to understand the Examiner’s position. In any event, it does not appear that *Pattison* discloses, teaches, or suggests that platform 16 is operable to “retrieve a plan template from the memory in response to receiving the presence message, wherein the plan template is retrieved based upon the client identity and the presence type,” as recited in Claim 39.

Conclusion

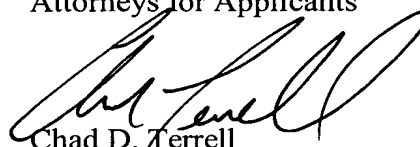
Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicants, at the Examiner's convenience at (214) 953-6813.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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